

401 KAR 11:050. Operator and training provider certification.

RELATES TO: KRS 223.160 - 223.220, 224.10-420(2), 224.73-110

STATUTORY AUTHORITY: KRS 223.160 – 223.220, 224.10-100, 224.10-110, 224.73-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-110 authorizes the cabinet to promulgate administrative regulations concerning the certification of water and wastewater operators. KRS 223.160 through 223.220 authorizes the cabinet to establish qualifications and examinations and establish fees for certification of water plant operators. KRS 224.73-110 authorizes the cabinet to promulgate administrative regulations for the certification of wastewater operators. This administrative regulation establishes application and examination procedures, provisions relating to certificate issuance, renewal, and termination; reciprocity; equivalency; training; and disciplinary actions for water and wastewater operators. This administrative regulation also establishes requirements for the certification of operator training providers.

Section 1. Application and Examination for Certification.

(1) An individual desiring to become a certified operator shall:

(a) Meet the education and experience requirements established in 401 KAR 11:030 or 11:040; and

(b) Achieve a minimum passing score of seventy (70) percent on an examination administered by the cabinet.

(2)(a) An applicant for certification shall submit to the cabinet:

1. A completed Registration Form for Exams and Training;
2. A completed Education and Experience Documentation Form; and
3. The certification application fee as established in 401 KAR 11:060.

(b) In addition to the requirements established in paragraph (a) of this subsection, an applicant desiring to obtain an Operator in Training designation shall submit a signed letter from a certified operator located at the facility where the applicant will work. The letter shall include:

1. A statement from the certified operator indicating that the certified operator shall oversee the work of the applicant seeking an Operator in Training designation;
2. A commitment that the certified operator shall serve as a mentor to the applicant seeking an Operator in Training designation if the applicant is under the certified operator's direct responsible charge; and
3. Confirmation that the certified operator has obtained a certification level that is equal to or greater than the certification level required to serve in primary responsibility or in direct responsible charge of the facility.

(c) An application shall not be submitted to the cabinet unless the applicant has met the requirements for examination.

(3)(a) After receipt of the application items for Class IV operators established in subsection (2) of this section, the cabinet, considering the recommendation of the board, shall determine if the applicant meets the requirements established in 401 KAR 11:030 or 11:040.

(b) After receipt of the application items established in subsection (2) of this section, the cabinet shall determine if the applicant meets the requirements established in 401 KAR 11:030 or 11:040.

(c) If the applicant meets the requirements established in 401 KAR 11:030 or 11:040, the cabinet shall approve the application and notify the applicant of the scheduled exam date.

(4)(a) Upon the applicant's completion of the examination, the cabinet shall notify the applicant of the applicant's examination score.

(b) A score of at least seventy (70) percent shall be required to pass the examination.

(5)(a) The cabinet shall issue a certificate and a wallet card to an applicant who successfully passes the certification examination.

(b) The certificate and wallet card shall designate the certification classification for which the operator has demonstrated competency.

(6) An applicant who fails to pass an examination may apply to take the examination again by resubmitting the Registration Form for Exams and Training and the application fee to the cabinet.

(7)(a) An examination shall not be returned to the applicant, but results may be reviewed by the applicant with a member of the cabinet.

(b) A request for a review shall be submitted to the cabinet in writing.

(8)(a) An equivalent certification may be issued, without examination, to a person who holds a valid certificate in a state, territory, or possession of the U.S. as established in 401 KAR 11:030 and 11:040.

(b) The applicant shall submit an Application for Reciprocity and Equivalency form and the reciprocity or equivalency fee as established in 401 KAR 11:060 to the cabinet.

(9)(a) A certified operator who holds an Operator in Training designation may upgrade the certification by removing the Operator in Training designation without examination if the operator:

1. Has satisfied the requirements established in Section 3(1)(a) and (b) of this administrative regulation;

2. Has acquired the minimum experience required for the certification being pursued as established in 401 KAR 11:030 or 11:040; and

3. Submits a letter from the certified operator who has served as the applicant's mentor during the Operator in Training period that recommends the removal of the Operator in Training designation.

(b) A certified operator with an Operator in Training designation who is unable to comply with the requirements established in paragraph (a) of this subsection shall apply for and retake the certification exam to upgrade the operator's certification.

Section 2. Duration of Certification.

(1)(a) Wastewater certifications shall expire on June 30 of an odd-numbered year unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Wastewater certifications issued on or after January 1 and on or before June 30 of an odd-numbered year shall expire on June 30 of the next odd-numbered year.

(2)(a) Water certifications shall expire on June 30 of an even-numbered year unless suspended, revoked, or replaced by a higher classification certificate before that date.

(b) Water certifications issued on or after January 1 and on or before June 30 of an even-numbered year shall expire on June 30 of the next even-numbered year.

(3)(a) An expired certification shall continue in force pending the administrative processing of a renewal if the certified operator has complied with the renewal requirements established in Section 3 of this administrative regulation.

(b) A certification continued in accordance with this subsection shall remain fully effective and enforceable.

(4) A certification shall terminate if not renewed on or before December 31 of the year the certification expired.

Section 3. Continuing Education and Certification Renewal.

(1) A certified operator who is not designated an Operator in Training may renew a certifica-

tion without examination if the operator has:

- (a) Accumulated the training hours required in subsection (5) of this section; and
- (b) Submitted a completed Application for Certification Renewal form and the renewal fee to the cabinet or has renewed the certification electronically on the cabinet's Web site <https://eec.ky.gov/Environmental-Protection/Compliance-Assistance/operator-certification-program/Pages/default.aspx>.

(2)(a) A certified operator seeking to renew a certification with an Operator in Training designation shall submit a:

1. Completed Application for Certification Renewal form;
2. Letter of mentorship; and
3. Completed Education and Experience Documentation form.

(b) The cabinet shall not approve an operator to renew a certification with Operator in Training designation unless the applicant has accumulated the required training hours established in subsection (5) of this section.

(3) If the Application for Certification Renewal form and the renewal fee are not received by the cabinet or submitted electronically by June 30 of the year the certification expires, a late renewal fee as established in 401 KAR 11:060 shall be paid.

(4)(a) A terminated certification shall not be renewed.

(b) An operator whose certification is terminated and who wishes to become recertified shall reapply for and pass an examination as established in Section 1 of this administrative regulation.

(5)(a) Prior to applying for certification renewal or to return a certificate to active status, a certified operator shall complete the required number of cabinet-approved training hours as established in Sections 4 and 5 of this administrative regulation.

(b) A certified operator holding multiple wastewater certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(c) A certified operator holding multiple water certifications issued in accordance with this administrative regulation shall complete the required number of cabinet-approved training hours for the highest certificate held in lieu of completing the required number of continuing education hours required for each certificate.

(d) Hours earned prior to initial certification shall not count toward certification renewal.

(e) Water and wastewater training hours shall be completed for each renewal during the two (2) year period immediately prior to the certificate expiration date.

1. Certified operators with a Bottled Water, Limited, Class I or II Treatment, Collection, or Distribution certification shall complete twelve (12) hours of approved training.

2. Certified operators with a Class III or IV Treatment, Collection, or Distribution certification shall complete twenty-four (24) hours of approved training.

Section 4. Certified Training Provider Program.

(1) A training provider applicant shall have provided cabinet-approved continuing education courses as established in Section 5 of this administrative regulation for a minimum of two (2) consecutive years prior to the application for certification.

(2) A training provider applicant shall submit to the cabinet:

- (a) A completed Application for Certified Training Provider form; and
- (b) The fee as established in 401 KAR 11:060.

(3) The cabinet shall:

(a) Notify a training provider applicant of the cabinet's decision within ninety (90) days of receiving the items established in subsection (2) of this section; and

(b) Issue a provider identification number that shall be written on all training materials and documentation.

(4) Training provider certification shall be valid for one (1) calendar year from the date of certification.

(5) The principal officers and core trainers of a certified training provider shall attend a cabinet training session prior to offering continuing education courses after certification has been approved.

(6) Continuing education courses offered by a certified training provider shall be based on core content.

(7) For each continuing education course:

(a) The certified training provider shall submit to the cabinet a Certified Training Provider Course Submittal form.

(b) The cabinet shall assign a course number.

(c) The certified training provider shall submit a Continuing Education Activity Report form at the completion of the course.

(d) The certified training provider shall retain for five (5) years:

1. A completed Application for Approval of Courses for Continuing Education Credit form;

2. Course learning objectives;

3. Criteria for successful completion by course attendees;

4. Agenda that establishes:

a. Course instruction and break times; and

b. Brief description of each topic;

5. The instructor's name and credentials;

6. Evaluation methods;

7. The completed Continuing Education Activity Report form;

8. A summary of participant evaluations; and

9. Instructional materials and references.

(8) Compliance.

(a) The cabinet and board may review the continuing education activities of a certified training provider at any time.

(b) A certified training provider shall be subject to its certification being limited, denied, or revoked if the cabinet, in consultation with the board, determines that the certified training operator has failed to comply with this administrative regulation.

(c) The certified training provider shall appear before the board if requested by the board.

(d) The board shall make a recommendation to the cabinet regarding the limitation, denial, or revocation of training provider certification if the certified training provider has failed to comply with this administrative regulation.

(e) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.

(f) After completing the review, the cabinet shall initiate the recommended action or notify the board as to why an alternative action was taken.

(g) A certified training provider that is aggrieved by a certification limitation, denial, or revocation action may file a petition for hearing with the cabinet as established in KRS 224.10-420 through 224.10-470.

Section 5. Training Approval of Non-Certified Training Providers.

(1) A training provider seeking approval of certified operator training shall submit to the cabinet a completed Application for Approval of Courses for Continuing Education Credit form.

(2) Upon completion of the approved training, the provider shall submit to the cabinet a completed Continuing Education Activity Report form.

(3) A certified operator who has attended training that has not been submitted to the cabinet for approval may apply for training approval as established in subsection (1) of this section.

(4) A certified operator who provides approved training shall receive hour-for-hour credit for actual instruction time.

(5)(a) Cabinet approval of training shall expire two (2) years following the date of approval.

(b) The cabinet, in consultation with the board, shall extend the approval expiration date if:

1. The provider requests the extension on the Extension Request for Approved Continuing Education Courses form; and

2. The training has not changed from the previous approval.

Section 6. Operator Disciplinary Action.

(1) A certified operator shall be subject to disciplinary action if the certified operator has not satisfactorily performed the operator's duties as established in 401 KAR 11:020.

(2)(a) A written complaint received by the board or cabinet regarding a certified operator, unless duplicitous or frivolous, and violations of 401 KAR 11:020 that are identified by the cabinet shall be evaluated by the board.

(b) The certified operator shall appear before the board if requested by the board.

(3) The board shall make a recommendation to the cabinet regarding disciplinary action. The board may recommend that disciplinary action not be taken or recommend that a disciplinary action be taken if the board determines that the certified operator has not satisfactorily performed operator duties in compliance with 401 KAR 11:020.

(4)(a) Upon receiving a recommendation from the board, the cabinet shall review the available evidence.

(b) After completing the review, the cabinet shall initiate the recommended disciplinary action or notify the board as to why an alternative disciplinary action was taken.

(5) A disciplinary action shall be commensurate with the severity, duration, and number of the violations. Disciplinary actions may include:

(a) Probation of the operator's certification for a specified period of time, not to exceed one (1) year;

(b) Suspension of the operator's certification for a specified period of time, not to exceed four (4) years, during which the certification shall be considered void;

(c) Revocation of the operator's certification;

(d) Civil or criminal penalties; or

(e) A combination of the disciplinary actions established in paragraphs (a) through (d) of this subsection.

(6) If disciplinary action is taken, the cabinet shall notify the certified operator and the operator's employer by certified mail of the action, the reasons outlined for the action, and the length of time for which the disciplinary action shall apply.

(7)(a) A certified operator whose certification has been suspended shall not have primary responsibility or be in direct responsible charge during the period that the suspension remains in effect.

(b) Experience gained during a suspension shall not be included toward meeting the requirements established in 401 KAR 11:030 or 11:040.

(8) If a certification is revoked, the operator shall be ineligible for future certification.

(9) A certified operator who is aggrieved by a disciplinary action may file a petition for hearing with the cabinet as established in KRS 224.10-420(2).

Section 7. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "Registration Form for Exams and Training", Form DCA1100, May 2019;
- (b) "Education and Experience Documentation Form", Form DCA1110, May 2019;
- (c) "Application for Certification Renewal", Form DCA1120, May 2019;
- (d) "Application for Approval of Courses for Continuing Education Credit", Form DCA1130, May 2019;
- (e) "Continuing Education Activity Report", Form DCA1140, May 2019; and
- (f) "Application for Reciprocity and Equivalency", Form DCA1150, May 2019.
- (g) "Extension Request For Approved Continuing Education Courses", Form DCA1180, May 2019;
- (h) "Application for Certified Training Provider", Form DCA1160, May 2019; and
- (i) "Certified Training Provider Course Submittal", Form DCA1170, May 2019.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Compliance Assistance, 300 Sower Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on the cabinet's Web site at <https://eec.ky.gov/Environmental-Protection/Compliance-Assistance/operator-certification-program/Pages/forms.aspx>. (35 Ky.R. 479; 1216; eff. 3-6-2009; eff. 2-5-2010; TAm eff. 7-8-2016; Crt eff. 11-1-2018; 45 Ky.R. 3531; 46 Ky.R. 962; eff. 11-1-2019.)